



Statement of Rep. Anna Eshoo Regarding the Conducting of Domestic Surveillance Without Judicial Supervision or Congressional Authorization by the Bush Administration

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On December 15, 2005, the *New York Times* reported that President Bush signed a secret order in 2002, allowing the National Security Agency (NSA) to conduct unauthorized surveillance on American citizens without a warrant. Following the New York Times report, the President acknowledged the existence of this program. He claimed he had unilateral authority under his constitutional role as Commander-in-Chief, and that the Congressional resolution authorizing military action in Afghanistan allowed him to engage in domestic surveillance.

In 1978, Congress established a special federal court under the *Foreign Intelligence Surveillance Act* (FISA) in order to process and approve requests for electronic surveillance and to provide a balance between our national security needs and the civil liberties guaranteed to all Americans. In exigent circumstances, the Act allows the government to conduct searches and surveillance before a warrant is issued, followed by pursuing the FISA Court's approval. Over 130,000 requests have been approved throughout the history of the Court, and only four requests have been denied during this period of time.

These are extraordinary tools which every President since Jimmy Carter has had at their disposal, and they're balanced by explicit Congressional approval and judicial review. If the President believed the law was inadequate to protect the country, he was obligated to ask the Congress to amend the law. He never did. Instead, he appears to have ignored the law and, by doing so, usurped the role of Congress and the Courts by simply authorizing the program himself. This action by the President eliminates the essential checks and balances the Founding Fathers put in place to limit the power of each branch of government. Congress has an oversight responsibility to investigate and as a Member of the House Intelligence Committee I've called for the Chairman of the Committee to begin oversight hearings immediately.

As a Member of the House Permanent Select Committee on Intelligence, I was never informed about these actions. Based on what's been reported, I believe they are unconstitutional and illegal. In fact, legal experts at the non-partisan Congressional Research Service (CRS) have concluded that the President did not have legal authority to initiate this program. (It's important to note that outside legal experts have offered their opinions based on what the President and members of his Administration have said in reaction to the *New York Times* article.) There's still a great deal we don't know and the only way to secure the full knowledge of the operation is for Congress to hold hearings and have the Administration testify under oath. (*Links to these non-partisan, third-party analyses can be found at the close of this statement.*)

Every President deserves to have the best intelligence possible to protect our country. It's also essential that our precious civil liberties are protected and that they don't become casualties of terrorism.